



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

---

---

NO. WR-94,676-01

---

---

EX PARTE SANTHY INTHALANGSY, Applicant

---

---

ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. 1471491-A IN THE 178TH DISTRICT COURT  
FROM HARRIS COUNTY

---

---

*Per curiam.*

### ORDER

Applicant was convicted of capital murder and sentenced to life imprisonment. The Fourteenth Court of Appeals affirmed his conviction. *Inthalangsy v. State*, No. 14-18-00205-CR (Tex. App. — Houston [14<sup>th</sup> Dist.] January 6, 2022 ) (not designated for publication). Applicant filed this application for a writ of habeas corpus in the county of conviction, and the district clerk forwarded it to this Court. *See* TEX. CODE CRIM. PROC. art. 11.07.

Applicant contends that trial counsel was ineffective because counsel failed to adequately challenge or object to the testimony of two witnesses identifying Applicant as one of the actors in the offense. Applicant alleges that trial counsel should have challenged the identification of Applicant by the victim's mother on the basis that her identification had been tainted by having been

sent information and pictures of Applicant from social media between the first time she viewed a photo array and was unable to identify anyone, and the second time she viewed a photo array in which she identified Applicant.

Applicant also alleges that trial counsel failed to argue that witness Frank Garza's identification of Applicant was tainted by an impermissibly suggestive pre-trial identification proceeding. Garza initially told law enforcement that he could not identify any of the actors, but told them that one of the actors had acne scars or spots on his face. Garza later identified Applicant in a live lineup. Applicant alleges that he was the only person in the live lineup with spots on his face, and was also the only person in the lineup who was wearing street shoes, while everyone else was wearing jail issue shower shoes.

The State responds that trial counsel did challenge the victim's mother's identification of Applicant on the same basis Applicant now argues. Trial counsel did cross-examine the victim's mother regarding her ability to identify Applicant after having received information from other people and social media implicating Applicant as one of the actors. However he did not object to her identification or argue for its suppression during the pre-trial identification hearing.

The State argues that trial counsel did challenge Frank Garza's identification of Applicant during the pre-trial identification hearing, after which the trial court denied trial counsel's motion to suppress the identification. However, trial counsel's challenge was not based not the facts argued by Applicant in his writ application.

Applicant has alleged facts that, if true, might entitle him to relief. *Strickland v. Washington*, 466 U.S. 668 (1984). Accordingly, the record should be developed. The trial court is the appropriate forum for findings of fact. TEX. CODE CRIM. PROC. art. 11.07, § 3(d). The trial court shall order trial

counsel to respond to Applicant's claim. In developing the record, the trial court may use any means set out in Article 11.07, § 3(d). If the trial court elects to hold a hearing, it shall determine whether Applicant is indigent. If Applicant is indigent and wants to be represented by counsel, the trial court shall appoint counsel to represent him at the hearing. *See* TEX. CODE CRIM. PROC. art. 26.04. If counsel is appointed or retained, the trial court shall immediately notify this Court of counsel's name.

The trial court shall make findings of fact and conclusions of law as to whether trial counsel's performance was deficient and Applicant was prejudiced. The trial court may make any other findings and conclusions that it deems appropriate in response to Applicant's claims.

The trial court shall make findings of fact and conclusions of law within ninety days from the date of this order. The district clerk shall then immediately forward to this Court the trial court's findings and conclusions and the record developed on remand, including, among other things, affidavits, motions, objections, proposed findings and conclusions, orders, and transcripts from hearings and depositions. *See* TEX. R. APP. P. 73.4(b)(4). Any extensions of time must be requested by the trial court and obtained from this Court.

Filed: April 12, 2023  
Do not publish